Zolkefly bin Haron v Yahya bin Chik & Anor

HIGH COURT (MUAR) — CIVIL SUIT NO 22–18 OF 1999
JEFFREY TAN J
6 FEBRUARY 2001

***Tort** — Defamation — Imputation of status of plaintiff's banking account — Whether there was publication to third parties — Whether wordings defamatory — Whether there was libel — Justification*

The plaintiff, an erstwhile customer of the second defendant, brought an action against the defendants for alleged defamatory imputations over oral and written statements made by the defendants about the status of his banking account. The plaintiff's case was that the defendants published and communicated to third parties the following words: 'that the plaintiff had a personal debt with the second defendants and that therefore the EAP could not open its current account with the second defendant', and that the defendants released without the consent of the plaintiff the 'customer account profile' of the plaintiff. It was submitted that the facts asserted in the words spoken to the third parties and in the customer account profile of the plaintiff were false. Amongst the documents tendered were two copies of the customer account profile of the plaintiff (PB231 and 232), the second defendant's ledger relating to the erstwhile account of the plaintiff (PB234), two letters of the plaintiff to the second defendant (DB18 and 19) and a letter of the second defendant to the plaintiff (DB20). Both parties agreed that a decision on the question 'whether the statements in PB231 and 232 are true or false, in the light of the statements in PB234 and DB18-20' could dispose of the cause or matter or could render the trial of the cause or matter unnecessary.

Held, dismissing the plaintiff's claim:

When read as a whole, PB231 and 232 stated that a bad debt of RM7,469.83 was written off but also that nothing was owing on the account. That was all that was imputed by total statements in PB231 and 232. Objectively there were no words in their ordinary and natural meaning capable of any defamatory imputation, unless the words 'bad debt' were read in isolation. PB231 and 232 only reflected what had happened. The remaining debt was written off, but not the records. And the second defendant was entitled to its records. The defendants had clearly established that the imputation in respect of which they were sued was true. The defendants had proved the truth of every defamatory facts alleged. The customer account profile tallied with the truth (PB234). Until 'written off', there was a bad debt (see p 8C–D, F, H).

[Bahasa Malaysia summary

Plaintif, seorang pelanggan defendan kedua, telah memulakan satu tindakan terhadap defendan-defendan untuk penuduhan yang dikatakan memfitnah ke atas pernyataan lisan dan bertulis yang dibuat oleh defendan-defendan mengenai keadaan akaun pembankannya. Kes plaintif adalah bahawa defendan-defendan menerbit dan menyampaikan kepada pihak ketiga perkataan-perkataan berikut: 'that the plaintiff had a personal debt with the second defendants and that therefore EAP could not open its current account with the second defendant', dan bahawa defendan-defendan mengeluarkan 'Customer Account Profile' plaintif tanpa izin plaintif. Adalah dihujahkan bahawa fakta-fakta yang ditegaskan dalam kata-kata yang diucapkan kepada pihak ketiga dan dalam profil akaun pelanggan adalah palsu. Di antara dokumen yang dikemukakan adalah dua salinan profil akaun pelanggan plaintif (PB231 dan 232), lejar defendan kedua berhubung dengan akaun plaintif (PB234), dua surat plaintif kepada defendan kedua (DB18 dan 19) dan sepucuk surat defendan kedua kepada plaintif (DB20). Kedua-dua pihak bersetuju bahawa keputusan atas soalan 'whether the statements in PB231 and 232 are true or false, in the light of the statements in PB234 and DB18-20' boleh menyelesaikan kausa atau perkara atau boleh menyebabkan perbicaraan kausa atau perkara tersebut menjadi tidak perlu.

Diputuskan, menolak tuntutan plaintif:

Apabila dibaca secara keseluruhan, PB231 dan 232 menyatakan bahawa satu 'bad debt' sebanyak RM7,469.83 telah dibatalkan tetapi juga bahawa tiada apa yang terhutang atas akaun. Cuma itu sahaja dikaitkan oleh pernyataan-pernyataan dalam PB231 dan 232. Secara objektif, tiada apa perkataan dalam maksud biasa dan semulajadi yang dapat memberikan apa-apa penuduhan yang memfitnah, melainkan perkataan 'bad debt' dibaca secara berasingan. PB231 and 232 cuma membayangkan apa yang telah berlaku. Baki hutang telah dibatalkan, tetapi bukan rekod-rekod tersebut. Dan defendan kedua berhak memperolehi rekodnya. Defendan-defendan telah berjaya membuktikan bahawa penuduhan itu berkenaan mana mereka didakwa adalah benar. Defendan-defendan telah membuktikan kebenaran setiap fakta fitnah yang dikatakan. Profil Akaun Pelanggan itu adalah selaras dengan kebenaran (PB234). Sehingga ia 'dibatalkan', 'bad debt' masih wujud (lihat ms 8C–D, F, H).]

Notes

For cases on defamation, see 12 *Mallal's Digest* (4th Ed, 2000 Reissue) paras 193-409.

Cases referred to

Dato' Musa bin Hitam v SH Alattas & 2 Ors [1991] CLJ 315 (refd)
Hasnul bin Abdul Hadi v Bulat bin Mohamed & Anor [1978] 1 MLJ 75 (refd)

Amrit Pal Singh (*Sukhdev & Amrit*) for the plaintiff.
Kumar Kanasingam (*Allen & Gledhill*) for the defendant.

Jeffrey Tan J. : This is an action by an erstwhile customer ('plaintiff') of the second defendant bank against the defendants (the first defendant was the manager of the second defendant's branch at Nos 51 and 53 Jalan Permas Jaya, Masai Johore Baru at the material time) for alleged defamatory imputation over oral and written remarks or statements made by the defendants about the status of his banking account.

According to the facts asserted in the statement of claim, related herein to set the scene, sometime in December 1998, the plaintiff as chairman and executive director of Syarikat EAP Enterprise Sdn Bhd ('EAP') was at the second defendant's branch at Nos 51 and 53 Jalan Permas Jaya, Masai Johore Baru, for the purpose of opening a current banking account for EAP. Later, in January 1999, the plaintiff instructed the manager of EAP to collect the cheque book for that current account from the second defendant's said branch. However, that manager was informed by the first defendant, *'bahawa plaintif ada hutang peribadi dengan defendan kedua dan oleh kerana hutang peribadi ini belum dijelaskan maka pembukaan akaun semasa untuk (EAP) tidak boleh diluluskan dan/atau ditangguh/ditahan'*. On 5 January 1999, at the second defendant's branch at Taman Tun Dr Ismail, an employee of the second defendant published the said oral statement to the plaintiff and to one of his business associates, and that employee released, without the consent of the plaintiff, the 'customer account profile' of the plaintiff to the plaintiff and to his business associate. To cut the (pleaded) story short, the plaintiff pleaded that the oral statements and the written statements in the 'customer account profile' were defamatory, as he was not indebted to the second defendant at the material time. The defendants, inter alia, pleaded justification.

The pleadings overall, running in total into 104 pages, in the main of 'facts', were both long and protracted. So, chances were, would it not be, that all material facts would have been pleaded. 'In libel, the words used are of material facts and must therefore be set out verbatim in the statement of claim, preferably in the form of a quotation. It is not enough to describe their substance, purport or effect. The law requires the very words of the libel to be set out in the declaration in order that the court may judge whether they constitute a ground of action' (*Gatley on Libel and Slander* (9th Ed) para 26.11). 'The general principles governing the pleading of the actual words in libel also apply to slander. Thus, in slander, the actual words spoken must be set out verbatim 'in order that the defendant may know the certainty of the charge, and may be able to shape his defence'. It is not sufficient to allege that the slanderer used such and such words or to that effect.' (*Gatley* para 26.13). In the present case, the words used and the

actual words spoken were not set out verbatim. But yet, there was never any application for an order requiring the plaintiff to give particulars. Still, it would appear from the opening statements of both learned counsels, that the defendants knew the certainty of the charge of libel.

When this action was called for trial, both learned counsel (Mr. Amrit Pal Singh for the plaintiff, and Mr. Kumar Kanagasingam for the defendants) firstly tendered an agreed bundle of documents ('AB'), and then separately tendered their own bundle of documents ('PB and DB'). Amongst the many documents in those bundles were two copies of the 'customer account profile' of the plaintiff ('PB231 and 232'), the second defendant's ledger relating to the erstwhile account of the plaintiff, ('PB234'), two letters of the plaintiff to the second defendant ('DB18 and 19'), and a letter of the second defendant to the plaintiff ('DB20').

Mr. Amrit then informed the Court that it is the plaintiff's case that the defendants published and communicated to third parties, namely to one Jensen Tan and one Choong Nam Fo, the following words, 'that the plaintiff had a personal debt with the second defendants, and that therefore EAP could not open its current account with the second defendant, and that the defendants released, without the consent of the plaintiff, the 'customer account profile' of the plaintiff to the said Choong Nam Fo. Mr Amrit added that the facts asserted in the words spoken to Jensen Tan and in the 'customer account profile' of the plaintiff were false. And then Mr Amrit informed that both parties agree (so it was later affirmed by Mr Kumar) that a decision on the question 'whether the statements in PB 231 and 232 are true or false, in the light of the statements in PB 234 and DB18-20' could dispose of the cause or matter or could render the trial of the cause or matter unnecessary, in the event that the decision is resolved in favour of the defendants, the plaintiff's entire claim may be dismissed with costs. Otherwise, the entire cause or matter shall be tried.

With regard to the trial of that preliminary question, Mr Amrit furthermore informed that both parties accept PB231 and PB232, PB234, and, DB18–20, as agreed documents — agreed as to the content and also as to the dispensation of formal proof — and that both parties rely solely on the oral submissions of counsel.

With those preliminaries settled by consent, Mr Kumar submitted as follows. 'The only issue is whether the statements in PB231 and 232 are true or false in the light of the statements in PB234 and DB18–20.' All parties accept the truth of the statement in PB234 and DB18–20. PB231 was a computer printout entitled 'customer account profile'. It stated that there was a 'bad debt w/o'. PB232 stated the status of the account as 'bad debt written off'. A debt of RM7,469.83 was written off. 'W/o' meant written off. PB234 was the ledger account for the period of 30 June 1994 to 27 April 1995. There were no credit entries prior to 14 April 1995. On 14 April 1995, the plaintiff paid RM150,000 into his account. But yet, there was an outstanding balance. In DB18, the plaintiff applied to the second defendant for a rebate of the interest charged. The plaintiff acknowledged

A that there was an outstanding balance, notwithstanding his payment of RM150,000 into his account. On 27 April 1995, the second defendant wrote off the outstanding balance of RM7,469.83. PB231 and 232 are consistent with the true status of the plaintiff's account. Nothing was said of monies due and owing. 'Truth is an absolute defence.' Lastly, he said that the defendants have demonstrated that the so called defamatory statements are true.

Mr Amrit submitted however that the plaintiff owed nothing to the second defendant. On 14 April 1995, the plaintiff paid RM150,000 into his account. On that day, the plaintiff requested for a rebate of the interest charged. On 27 April 1995, the account had been settled. Yet, PB231 and 232 falsely imputed that the plaintiff was a borrower with his account status as 'bad debt w/o'. PB231 and 232 do not reflect PB234. PB234 contains the truth, but not PB231 and 232. The statements in PB231 and 232 cannot be justified by PB234. The defendants must prove justification. In view of the differences in PB231 and 232 and PB234, justification has not been proved.

That last remark drew a quick riposte from Mr Kumar, who said that the plaintiff had not pointed out the differences. Mr Kumar further replied that it is clear that the plaintiff was a borrower who was indebted to the second defendant, and that there was an outstanding sum, notwithstanding the credit of RM150,000. PB232 merely stated that a bad debt of RM7,469.83 was written off. What was said in PB231 and 232 was true. Mr Amrit just replied that the second defendant was not justified to have stated what was in PB231 and 232.

Evidently, all parties unequivocally accepted the truth of the statements in PB234 — the second defendant's ledger of the banking account of the plaintiff. That PB234 is now reproduced below:

Date	Details	Debit	Credit	Balance	Credit/Debit in Brackets	Balance
31.6.94	C/F			143,611.83		72,205.47
28.7.94	Misc. Dr	500.00		144,111.83	-	-
31.7.94	Int	1395.02		145,506.85	1395.02	73,600.49
31.8.94	Int	1401.20		146,108.05	1401.20	75,001.69
30.9.94	Int	1369.50		148,277.55	1369.50	76,371.19
31.10.94	Int	1403.68		149,689.23	1403.68	77,774.87
30.11.94	Int	1365.40		151,046.83	1365.60	79,140.47
31.12.94	Int	1450.06		152,473.88	1427.05	80,567.52
31.5.95	Int	1450.06		153,923.94	1450.06	82,017.58
28.3.95	Misc. Dr/Chng of shr	49.75		155,303.41		
31.3.95	Int	1427.051		156,797.62	1494.21	84,841.51
14.4.95	Cash		150,000.00	6,797.62		
30.4.95	Int	672.21		7,469.83	672.21	85,513.72
27.4.94	Amount write off against 118		7460.83	Nil	(7,469.83)	78,043.89
27.4.95	118 OD transferred to 118w/back	-	-	-	(78,043.89)	Nil
27.4.95	A/c regularized & settled	-	-	-	-	-

Now, PB234 was the record of the credit and debit entries for the period 30 June 1994 to 27 April 1995. The entries in that ledger, they plainly say that the plaintiff, up and until 14 April 1995 was indebted to the second defendant in the sum of RM156,797.62. They also plainly say, that the plaintiff was still indebted to the second defendant in the sum of RM6,797.62, despite the credit of RM150,000. After 14 April 1995, no other credits were posted in the ledger. Therefore, there could be no argument that up and until 27 April 1995, the plaintiff was still indebted to the second defendant, although by then in a sum reduced to RM6,797.62. The total outstanding sum, quite clearly, was never fully settled in the sense that the total outstanding sum was never fully paid or discharged. Subsequent entries say, that the debit balance of RM7,469.83 (it being the said RM6,797.82 plus interest of RM672.21) was written off on 27 April 1995. Thus, on 27 April 1995, the account was fully 'settled', but only because the outstanding sum of RM7,469.83 was written off by the second defendant.

That unspecified truth that all parties unequivocally accept may now be specified. The parties accept as truth that the plaintiff was indebted to the second defendant in the sum of RM7,469.83, that the outstanding sum was written off by the second defendant, and that the plaintiff after 27 April 1995 was no longer indebted to the second defendant. The parties also accept as truth that the plaintiff, after credit of RM150,000 into his outstanding account, applied for a rebate (see DB18 of the interest charged, and that the second defendant confirmed to the plaintiff (see DB20) that all outstanding sums had been settled as on 27 April 1995.

But what was imputed in PB231 and 232 that was false? Both PB231 and 232 are reproduced below:

PB231

CIFFIC82 MALAYAN BANKING BERHAD 05/01/99 11:13
RETURN ING CUSTOMER ACCOUNT PROFILE M1427B1

CUSTOMER NUMBER 2754729 NAME: ZOLKEFLY BIN HARON
ID NUMBER : 7210278
NEW IC NUMBER: 640109 015325

CUSTOMER TYPE PER BUMI CUSTOMER CLASS
PERSONAL

SEL ACCOUNT NUMBER PRODUCT CARD NAME/INT RATE
OPEN DATE REL STATUS
BAL DESCRIPTION HOLD/MISC CODES CREDIT LIMIT CURR
BALANCE

NEXT RESPONSE: INQUSAP NEXT KEY:
CB 502200 ACCOUNT ROLE NOT FOUNDCB 502200 ACCOUNT
ROLE NOT FOUND
CB 5105501 CREDIT CARD CUSTOMER NOT FOUND
CUSTOMER LIABILITY SYSTEM

I/C NUMBER: 7210278 01 NAME: ZOLKEFLY BIN HARON
A/C STATUS: NORMAL CAPACITY: BORROWER

A/A NUMBER: 95/90228 BORROW
H/L NUMBER: 0000BRANCH: TAMAN TUN DR. ISMAIL
DATE RECEIVED: 19/01/88 REVIEW: NOT SUBJECT REVIEW
APPROVAL DATE: 19/01/88 A/C STATUS:
APPROVAL LEVEL: BRANCH LEVEL A/A STATUS: BAD DEBT W/O
DESTGNATION: BUMI-CONSUMER REST STATUS:RESIDENT
A/A CLASS'N: NORMAL ECON SECTOR: OTH SECTORS
RELATED TO: NOT APLICABLE OFFICER ID:
O1 FACILITY INT% C LIMIT SECURITY VVALUATION
OD.000 7,469.83 CLEAN.00
<PF5 = PREV SCRN> <PF6 = NEXT SCRN> <PF8 = MAIN MENU>
<PF10=PRT AA., PF11 = NEXT ENQR.>
*** CUSTOMER ENQUIRY COMPLETE.

PB232

CIFFICA3 MALAYAN BANKING BERHAD 05/01/9911:12
STATUS PROFILE OF CUSTOMER'S STATUS M1427B1STEP

OLD IC NUMBER: 7210278 PASSPORT NBR:
BUS REG/REG CERT NBH: NEW IC NBR:

SEL CUSTOMER'S STATUTES CUSTOMER'S NAME IN
BMC/OCISS/CLS
BMC - NOT LISTED OLD TC/BR/RC/NEW IC/PP NBRIND
BANKRUPTCY - NOT LISTED
BAD DEBT WRITTEN-OFF ZOLKEFLY B HARON
7210278

PRESS “PF5” TO VERIFY STATUS OF CUSTOMER’S SAFE, MARS OR CREDIT CARD ACCOUNT
NEXT RESPONSE: STATUS NEXT KEY:
CB510547 ENTER X IN SEL TO VIEW DETAIL* CB510548 ENTER OLD IC/PP/NIC/BR/NAME*

CIFFICB4 MALAYAN BANKING BERHAD 05/01/9911:13
BAD DEBTS WRITTEN-OFF STATUS INQUIRY M1427B1 STEP

IC/BUS REG NO: 72102781 TOTAL PAGE: 1
NAME: ZOLKEFLY BIN HARON

STATUS: BAD DEBTS WRITTEN OFF
APPROVAL DATE: 19/01/88
APPROVAL LEVEL: BRANCH LEVEL
BRANCH: TMN TUN DR ISMAIL
STAFF/DIR RELATED: NOT APPLICABLE
AMOUNT: 7,469.83

NEXT RESPONSE: STATUS NEXT KEY:
CB503282 LAST PAGE *CB510557 HIT ENTER TO RETURN TO STATUS*
CB510548 ENTER OLD IC/PP/NIC/BR/NAME*

Mr Amrit contended that PB231 and PB232 imputed that the plaintiff was a borrower with the status of his account as ‘bad debt w/o’. Mr Amrit argued that there was never any bad debt, as the account had been settled. With respect, it would appear that the plaintiff would not read PB231 and

232 as a whole. PB232 was the first computer printout, whilst PB231 was the second computer printout. That is evident from the time printed on the top right hand side of PB232 as 11:12, and on the top right hand side of PB231 as 11:13. PB232 stated that a bad debt of RM7,469.83 was written off. In the following, PB231 with the full particulars of the account, the status of the account was stated as 'bad debt w/o'. Both PB231 and 232 stated that a bad debt of RM7,469.83 was written off, an imputation entirely consistent with the truth. Perhaps, the meaning of the particular 'limit security RM7,469.83 clean' in PB231 was not all that clear. But in relation to the status of plaintiff's account, the other particulars in PB231 clearly stated that there was nothing owing to the second defendant on 5 January 1999. At the bottom of PB231, it was stated that the credit facility granted to the plaintiff on 19 January 1988 was an overdraft, but it was also stated that the amount outstanding was '.00'. When read as a whole, it is unmistakable that PB231 and 232 stated that a bad debt of RM7,469.83 was written off, but also that nothing was owing on the account. That was all that was imputed by total statements in PB231 and 232. Objectively, there were no words in their ordinary and natural meaning capable any defamatory imputation, unless the words 'bad debt' were read in isolation.

Admittedly, it is true that as at 5 January 1999 the plaintiff owed nothing to the second defendant. But it is also true that nothing was imputed in PB231 or 232 that the plaintiff was indebted to the second defendant or that the plaintiff was still a borrower or a debtor. How it could be so contended is a mystery. The fact of the matter was that an outstanding debt of RM7,469.83 was written off. After the credit of RM150,000, the plaintiff applied for a rebate of the interest charged, and then the second defendant wrote off the remaining debt. Only in that manner was the remaining debt of RM7,469.83 'settled'. Hence, PB231 and 232 only reflected what had happened. The remaining debt was written off, but not the records. And the second defendant was entitled to its records.

The plaintiff took umbrage, but the 'customer account profile' of his account was not false. And 'it is not actionable maliciously to publish the truth' (*Gatley* para 11.1). 'Truth or justification is an absolute defence to an action in libel or slander. If the statement is true, no amount of malice, bad faith or belief in the falsity of the statement will make it actionable. If people think the worst of the plaintiff when they hear the truth about him, then his reputation has only been reduced to the proper level' (*The Law of Defamation in Singapore and Malaysia* by Keith R Evans, 2nd Ed, p 49; see also *Hasnul bin Abdul Hadi v Bulat bin Mohamed & Anor* [1978] 1 MLJ 75, *Dato' Musa bin Hitam v SH Alattas & 2 Ors* [1991] CLJ 315). In the present case, the defendants have clearly established that the imputation in respect of which they are being sued is true. The defendants have proved the truth of each defamatory fact alleged. The 'customer account profile' tallies with the truth (PB234). Until 'written off', there was a bad debt.

All parties agree that if the statements in PB231 and 232 are true, that the plaintiff's claim then may be dismissed with costs. That still holds true.

A Accordingly, and for the above reasons, the plaintiff's claim is dismissed with costs.

Plaintiff's claim dismissed.

Reported by Jafisah Jaafar

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